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**IN THE
COURT OF APPEALS OF INDIANA**

GREGORY LUCAS,)	
)	
Appellant-Defendant,)	
)	
vs.)	No. 49A05-0611-CR-646
)	
STATE OF INDIANA,)	
)	
Appellee.)	

APPEAL FROM THE MARION SUPERIOR COURT
CRIMINAL DIVISION, ROOM 10
The Honorable Linda Brown, Judge
Cause No. 49F10-0512-CM-220717

July 19, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

SULLIVAN, Judge

Following a bench trial, Appellant, Gregory Lucas, was convicted of one count of Resisting Law Enforcement as a Class A misdemeanor.¹ Upon appeal, Lucas contends that the evidence presented to the trial court is insufficient to support his conviction.

We affirm.

The facts most favorable to the conviction² reveal that on December 22, 2005, Officer Charles Benner of the Indianapolis Police Department was on patrol, in full uniform, driving westbound on Prospect Street when he noticed a car without a license plate parked in the parking lot of a convenience store. Noting that the car had no visible license plate, and concerned that there had been several robberies in that part of town, Officer Benner parked his patrol car next to the car. When Officer Benner parked next to the car, the person behind the wheel, later identified as defendant Lucas, “jumped” out of the car and entered the store. Despite the December weather, Lucas was not wearing a coat. Officer Benner observed Lucas walk back and forth in the rear part of the store, opening the coolers. Lucas was standing at the counter preparing to buy a soft drink when Officer Benner entered the store. Upon seeing Officer Benner, Lucas took the drink, put it back in the cooler, and walked out of the store.

Now even more suspicious of Lucas’s behavior, Officer Benner asked the store clerk if she recognized Lucas. When the clerk replied that she did not, Officer Benner asked if Lucas had said anything to her, and the clerk replied that Lucas had said nothing. Officer Benner then walked out of the store and asked to see Lucas’s identification.

¹ Ind. Code § 35-44-3-3(a) (Burns Code Ed. Supp. 2006).

² In his appellant’s brief, Lucas refers to the version of events as related by him during his trial testimony. Our standard of review precludes us from considering this evidence upon appeal.

Lucas asked why Officer Benner wanted to see the identification, and Officer Benner explained that the car Lucas was driving did not have a license plate. Lucas told Officer Benner that there was a plate in the car, and when Officer Benner shined his flashlight inside the car, he could see a temporary license plate lying flat underneath the back window. The plate was not visible without shining the flashlight inside the car. Officer Benner told Lucas that the temporary plate was improperly displayed and that he needed to see Lucas's identification. Lucas refused. Lucas also refused to tell Officer Benner what his name was. Lucas then opened his car door and took out his wallet, causing Officer Benner to think that Lucas would give him his identification. Instead, Lucas dove into his car head first.

As Lucas did so, Officer Benner grabbed him and told him not to get into the car. Officer Benner told Lucas to put his hands on top of the car, but Lucas refused. When Officer Benner tried to do a pat-down on Lucas, Lucas pushed Officer Benner's hands away and tried to turn to face him. As Officer Benner kept struggling to turn Lucas back around to face the car, Lucas taunted him by saying, "why are you so nervous, officer?" Tr. at 18. When Officer Benner instructed Lucas to put his arms behind his back, Lucas refused and began to flail his arms. Officer William Bueckers arrived on the scene to assist and warned Lucas that if he did not stop resisting, he would be "tazed." Both officers could not overpower Lucas or force him to move his arms behind his back. Officer Bueckers testified that by flailing his arms, Lucas was attempting to push the police out of his way so that he could get into his car. The struggle caused all three men to move toward the rear of the car as Lucas still tried to get inside the car. Officer

Bueckers eventually “tazed” Lucas, which allowed the officers to place Lucas in handcuffs.

Although Officer Benner found Lucas’s identification in the wallet, there was no money inside. However, Officer Benner found almost \$500 in cash in shorts in the back of the car. There was also no registration or other paperwork inside the car, but Officer Benner did confirm Lucas’s story that the car had been rented. The rental company told Officer Benner that the temporary license plate had been taped to the back window.

On December 22, 2005, the State charged Lucas with one count of resisting law enforcement as a Class A misdemeanor. A bench trial was held on August 28, 2006, at which Lucas represented himself.³ At the conclusion of the evidence, the trial court found Lucas guilty as charged. The trial court then proceeded to sentence Lucas to 365 days in jail, with 362 days suspended, and gave Lucas three days’ credit for time served. The trial court ordered Lucas to perform eighty hours of community service.

Upon appeal, Lucas challenges the sufficiency of the evidence supporting his conviction. Upon review of such claims, we neither reweigh evidence nor judge witness credibility. Proffit v. State, 817 N.E.2d 675, 680 (Ind. Ct. App. 2004), trans. denied. Instead, we consider only the evidence which supports the conviction and the reasonable inferences to be drawn therefrom to determine whether there is substantial evidence of

³ Lucas was apparently represented by a deputy public defender, but on the day of trial, that counsel was ill. When a representative of the public defender’s office explained this to the trial court and requested a continuance so that Lucas’s appointed counsel could represent him, Lucas objected and informed the trial court that he wished to represent himself.

probative value from which a reasonable trier of fact could have concluded that the defendant was guilty of the charged crime beyond a reasonable doubt. Id.

Pursuant to the governing statute, a person commits resisting law enforcement if he knowingly or intentionally forcibly resists, obstructs, or interferes with a law enforcement officer or a person assisting the officer while the officer is lawfully engaged in the execution of the officer's duties. I.C. § 35-44-3-3(a)(1). Our Supreme Court has construed this statute to mean that the "forcibly" element applies to resisting, obstructing, or interfering with a law enforcement officer. Spangler v. State, 607 N.E.2d 720, 723 (Ind. 1993). A person forcibly resists law enforcement when "'strong, powerful, [or] violent means are used to evade a law enforcement official's rightful exercise of his or her duties.'" Johnson v. State, 833 N.E.2d 516, 517 (Ind. Ct. App. 2005) (quoting Spangler, 607 N.E.2d at 723).⁴ In the present case, Lucas claims that there was no evidence that he used force or violence against the officers involved. We disagree.

We have explained before that I.C. § 35-44-3-3 does not require an "overly strict" definition of "forcibly resist." J.S. v. State, 843 N.E.2d 1013, 1017 (Ind. Ct. App. 2006) (quoting Johnson, 833 N.E.2d at 519)), trans. denied. Here, Lucas refused to face his car and allow Officer Benner to pat him down; he resisted Officer Benner's efforts to place his hands behind his back; he flailed his arms when Officer Benner attempted to place him in handcuffs, trying to push the officers out of his way in an attempt to get back into

⁴ The disjunctive "or" with regard to the "violence" factor is prompted by Price v. State, 622 N.E.2d 954 (Ind. 1993) as discussed in Johnson.

his car; and he struggled with officers to such an extent that they had to “taze” him to get his arms behind his back and place him in handcuffs.

From this evidence, the trial court, as the trier of fact, could reasonably conclude that Lucas forcibly resisted Officers Benner and Bueckers. See J.S., 843 N.E.2d at 1017 (affirming juvenile adjudication based upon crime of resisting law enforcement where defendant flailed her arms, and pulled, jerked, and yanked away from police officer); Johnson, 833 N.E.2d at 519 (affirming conviction for resisting law enforcement where defendant turned and pushed away from arresting officers and “stiffened up” when they tried to put defendant into a transport vehicle); Guthrie v. State, 720 N.E.2d 7, 9 (Ind. Ct. App. 1999) (affirming conviction for resisting law enforcement where defendant refused to get out of jail wagon, was forcibly removed from the wagon and placed on the ground, refused to get up when asked, was lifted to his feet but refused to walk, resisted officers’ efforts by leaning his body back and stiffening his legs, and eventually had to be carried to the receiving area), trans. denied; Wellman v. State, 703 N.E.2d 1061, 1064 (Ind. Ct. App. 1998) (affirming resisting law enforcement conviction where defendant placed his hands against a doorframe to hold himself inside his house after he was placed under arrest, requiring officers to push him through the door and lift him from the ground when he refused to walk).

The present case is unlike that in Spangler, supra, wherein the court overturned the conviction of a defendant who had simply passively resisted service of process by turning and walking away from a sheriff’s deputy. 607 N.E.2d at 724-25. Also distinguishable is Ajabu v. State, 704 N.E.2d 494, 495-96 (Ind. Ct. App. 1998), wherein the defendant’s

conviction for resisting law enforcement was reversed because the defendant had “twisted and turned a little” as he held onto a flag which a police officer had tried to take from him.

Here, the fact that Lucas did not attempt to punch, hit, or kick the officers does not lessen the forcefulness of his resistance, which was more than passive.

The judgment of the trial court is affirmed.

ROBB, J., and VAIDIK, J., concur.